IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 10989 of 2007(G)

AGAINST THE ORDER IN IA 343 2007 IN OS.51/2004 of PRL.M.C., KOCHI

.....

PETITIONER:

ASHOK KUMAR, S/O.R.PARAMESWARAN,
AGED 54, RESIDING AT C.C.10/1440,
FORT KOCHI, FORT KOCHI VILLAGE, KOCHI TALUK.

BY ADV. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI

RESPONDENTS:

----

1. **RAVEENDRAN, S/O.LATE R.P.PARAMESWARAN,**
   AGED 55, H.NO.7/252, SOUTH CHITTOOR,
   KOCHI-27.

2. **RAJESWARI, W/O.P.K.VINAYAN,**
   AGED 46, RESIDING AT E-A AUTO HEMCE ON C
   ANKALESWAR, GUJARATH, C/O.H.NO.7/252,
   SOUTH CHITTOOR, KOCHI-7.

BY ADV. SRI.BABU KARUKAPADATH forR1
SMT.M.A.VAHEEDA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.10989/2007 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE DECREE DTD. 20/10/2004 IN O.S.NO.51/2004 ON THE FILE OF COURT OF PRL.MUNSIFF KOCHI.**

EXT.P2: **COPY OF THE JUDGMENT DTD. 20/10/2004 IN O.S.51/2004 ON THE FILE OF COURT OF PRL.MUNSIFF KOCHI.**

EXT.P3: **COPY OF I.A.NO.1263/2005 IN O.A.51/2004.**

EXT.P4: **COPY OF THE OBJECTION TO THE I.A.NO.1263/2005 IN O.S.51/2004.**

EXT.P5: **COPY OF THE OBJECTION TO THE FINAL DECREE APPLICATION.**

EXT.P6: **COPY OF THE I.A.NO.227/2007 IN O.S.51/2004.**

EXT.P7: **COPY OF THE OBJECTION TO I.A.NO.227 OF 2007 IN O.S.51/2004.**

EXT.P8: **COPY OF I.A.NO.343 OF 2007 IN O.S.51/2004.**

EXT.P9: **COPY OF THE OBJECTION TO I.A.NO.343 OF 2007 IN O.S.51/2004.**

EXT.P10: **COPY OF THE ORDER PASSED IN I.A.NO.343 OF 2007 IN O.S.51/2004.**

EXT.P11: **COPY OF THE ORDER PASSED IN I.A.NO.227 OF 2007 IN O.S.51/2004.**

EXT.P12: **COPY OF THE I.A.NO.400 OF 2007 IN A..S.NO.55/2005.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No.10989 OF 2007 G

Dated this the 5th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Exts.P1 and 4 orders passed by the Munsiff, Kochi. The trial court has passed a preliminary decree directing the property to be divided into three equal shares including the residential building and two shop rooms bearing door numbers, C.C.10/1439, 10/1439 A1A. Learned counsel for the writ petitioner argues before me that she has preferred an appeal against that decree before the Subordinate Judge, Kochi and it is pending before that court. It is also submitted by her that she has moved an application, I.A.400/07 in A.S.55/05 for staying the final decree proceedings till the disposal of the appeal. As there is no stay with respect to the proceeding or passing of final decree till this day, the trial court proceeded to take steps in the final decree application. The present writ petitioner wanted the court to appoint a commissioner to visit the property and value the property and thereafter the writ petitioner seeks the court's indulgence to get that property on payment of the amount fixed by the commission. I am afraid, this prayer as things stand today, cannot be considered by the final decree court.

What preliminary decree provides for is division of the property into three equal shares and it has not reserved or given any equity to any of the parties. So, in the absence of such a direction the final decree court cannot appoint a commissioner to value the property and permit the writ petitioner to take the property on deposit of the said amount. Therefore, the order under challenge is not valid. It is a settled practice that in a partition suit when the property is incapable of being divided by metes and bounds, in order to protect the interest of all the parties, firstly the property is proposed to be sold among sharers and if it is not possible, in public auction. So, this is what is contemplated to be taken by the learned Munsiff in the final decree proceedings. I cannot find any fault with such a direction. But, at the same time, it has to be remembered that the writ petitioner has filed an appeal in 2005 and also has moved an application though in 2007 for stay of the final decree proceedings. It is specifically contended that the shop rooms which are ordered to be partitioned belongs to him exclusively and it is not partible and therefore, he wants stay of the proceedings. Since the stay application is pending before the Subordinate Judge's Court, Kochi, it is only just and equitable to direct that court to pass orders in the stay

application and so there need not be further complication on account of passing a final decree in the case. Therefore, the writ petition is disposed of as follows:-

i) The order of the learned Munsiff, Kochi is confirmed. But the learned Munsiff is directed not to proceed further with the steps in the final decree proceedings for a period of six weeks so as to enable the Subordinate Judge's Court, Kochi where the appeal is pending to dispose of the stay application filed in the appeal.

ii) If the Subordinate Judge's Court is in a position to dispose of the appeal itself, both the parties agree for the same and it may also be done as early as possible.

M.N.KRISHNAN
Judge

jj